IN THE HIGH COURT OF JUDICATURE FOR RAJATHAN AT JODHPUR

S.B.Civil Writ Petition No.5851/2004

Gaurav Sankhala V/s State of Rajasthan and ors.

Date of Order::- 25.5.2005

PRESENT

HON'BLE SHRI R.P.VYAS,J.

Mr.I.R. Choudhary, for the petitioner.
Ms.V.Bora, Assistant Government Advocate
Mr.P.D. Vaishnav, for the respondents No. 4 & 5.

ORDER

BY THE COURT

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents with the prayer that by an appropriate writ, order or direction, the respondents may be directed to provide appointment to the petitioner to the post of Physical Training Instructor (PTI) Gr.III on the basis of marks obtained in Sr. Secondary (Vocational).

2. The case of the petitioner as putforward by him in this writ petition is as follows:

The petitioner passed the Secondary School Examination and thereafter, he passed the Senior Secondary (Vocational) Examination from the Board of Secondary Education, Rajasthan, Ajmer in the year 1998.

Thereafter, the petitioner passed Certificate Course of Physical Education Examination, 1999.

The further case of the petitioner is that the respondent no.2 Director, Secondary Education,Rajasthan, Bikaner issued advertisement Annex.7 dated 28.7.2003, which was published in the newspaper “Dainik Bhaskar” on 30.7.2003, inviting applications for recruitment to the posts of Physical Training Instructor (P.T.I.) Gr.III.

In pursuance of the said advertisement Annex.7, the petitioner being eligible applied for the post of Physical Training Instructor (PTI) Gr.III alongwith the requisite documents.

Thereafter, after scrutiny of the application forms, a provisional merit list was

got prepared by the respondents and was published. According to the petitioner, in the said provisional merit list, the name of the petitioner was not placed at proper place.

The further case of the petitioner is that after commencement of the recruitment process, the respondent no.2 Director issued directions to all the District Education Officers, Secondary Education including respondent no.3 through Circular dated 16.8.2003 and as per directions contained in clause (1) of circular dated 16.8.2003, for appointment to the post of Physical Training Instructor (PTI) Gr.III, the marks obtained in compulsory subjects of Vocational Course as well as marks obtained in optional subjects of Bridge Course would be taken into consideration.

The petitioner has challenged the aforesaid directions contained in clause 1 of Circular dated 16.8.2003 on various grounds and the main case of the petitioner is that the Circular dated 16.8.2003 was issued by the respondent no.2 Director on 16.8.2003 and prior to that, selection process for appointment to the post of Physical Training Instructor (PTI) Gr.III had already commenced in pursuance of advertisement

dtd.28.7.2003 (Annex.7) and therefore, subsequent issuance of the directions through clause (1) of Circular dated 16.8.2003 that for recruitment to the posts of Physical Training Instructor (PTI) Gr.III, merit list would be prepared taking into consideration the marks obtained in compulsory subjects of Vocational Course as well as marks obtained in optional subjects of Bridge Course, was nothing, but an arbitrary exercise on the part of the respondents and furthermore, since these directions were issued after commencement of selection process and therefore, they would not affect the selection process, which had already commenced, and thus, the action of the respondents preparing merit list on the basis of impugned directions as contained in clause (1) of Circular dated 16.8.2003 is illegal, unreasonable and contrary to the law laid down by the Hon'ble Supreme Court.

The learned counsel for the petitioner also submits that the Hon'ble Supreme Court in the case of Sunita Sharma V/s State of Rajasthan reported in JT 2001 (10) SC 170 has held that Sr. Secondary (Vocational) is equivalent to Sr. Secondary (Academic).

On the other hand, learned counsel for the respondents submitted that directions as contained in Circular dated 16.8.2003 were issued by the Director (respondent no.2) for preparing merit list for appointment to the post of Physical Training Instructor (PTI) Gr.III and as per clause (1) of Circular dated 16.8.2003, it was decided that while preparing merit list, the marks obtained in compulsory subjects of Vocational Course, as well as marks obtained in optional subjects of Bridge Course would be taken into consideration and since it was a policy matter, therefore, the petitioner cannot challenge the directions contained in clause (1) of Circular dated 16.8.2003. Hence, this writ petition deserves to be dismissed.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondents and gone through the record of the case.

4. There is no dispute on the point that the petitioner passed the Senior Secondary (Vocational) Examination from the Board of Secondary Education, Rajasthan, Ajmer in the year 1998.

5. There is also no dispute on the point that the petitioner passed Certificate Course of Physical Education Examination, 1999.

6. There is also no dispute on the point that the respondent no.2 Director, Secondary Education, Rajasthan, Bikaner issued advertisement Annex.7 dated 28.7.2003, which was published in the newspaper Dainik Bhaskar on 30.7.2003, inviting applications for recruitment to the posts of Physical Training Instructor (P.T.I.) Gr.III and the last date of submission of application forms was 13.8.2003.

7. There is also no dispute on the point that the respondent no.2 Director through Notification dated 31.7.2003 issued certain directions with respect to aforesaid recruitment to the posts of Physical Training Instructor (PTI) Gr.III.

8. There is also no dispute on the point that in pursuance of the said advertisement Annex.7 the petitioner submitted his application form for the post of Physical Training Instructor (PTI) Gr.III alongwith the requisite documents within the stipulated period.

9. There is also no dispute on the point that after scrutiny of the application forms, a provisional merit

list was got prepared by the respondents and according to the petitioner, he was not placed at proper place.

10. There is also no dispute on the point that the respondent no.2 Director issued directions to all the District Education Officers, Secondary Education including respondents no.3 through Circular dated 16.8.2003 and as per directions contained in clause (1) of circular dated 16.8.2003, for appointment to the posts of Physical Training Instructor (PTI) Gr.III, the merit list would be prepared taking into consideration the marks obtained in compulsory subjects of Vocational Course as well as marks obtained in optional subjects of Bridge Course and there is also no dispute on the point that prior to issuance of that Circular dated 16.8.2003, the selection process had already commenced.

11. There is also no dispute on the point that thereafter, a merit list was prepared on the basis of new directions contained in clause (1) of Circular dated 16.8.2003.

12. The question for consideration is, whether in the facts and circumstances just mentioned above, preparation of fresh merit list for appointment to the posts of Physical Training Instructor (PTI) Gr.III on the basis of new directions as contained in clause (1)

of Circular dated 16.8.2003 and superseding the earlier Notification dated 31.7.2003, is correct one or not.

13. In P.Mahendran and ors. V/s State of Karnataka and ors. ((1990) 1 SCC 411), the Hon'ble Supreme Court has observed as under:-

> "Every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights, the rule must be held to be prospective. If a rule is expressed in a language which is fairly capable of either interpretation if ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure."

14. Thus, from the above wordings of the Hon'ble Supreme Court, it is crystal clear that every statutory rule is prospective, unless it is expressly or by necessary implication made to have retrospective effect.

15. A bare perusal of the Circular dated 16.8.2003 especially clause (1) shows that some amendments in the Notification dated 31.7.2003 were made.

16. The Hon'ble Supreme Court in Gopal Krushna Rath V/s M.A.A. Baid (dead) by LRs. ((1999) 1 SCC 544)

while dealing with recruitment process has observed as under:-

> "When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in requirement regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise, it would involve issuing a fresh advertisement with new qualifications. In the present case, the appellant possessed necessary qualifications as advertised on the last date of receiving applications. These qualifications were in accordance with the rules/guidelines then in force. The appellant obtained higher marks than the original respondent 1 (since deceased) at the selection. There is no change to the process of selection, nor is there any allegation of malafide in the process of selection. The appellant's selection is, therefore, upheld."

17. The above authority of the Hon'ble Supreme Court clearly lays down the law that when the selection process has commenced, subsequent amendment would not affect the process of selection which has already commenced.

18. In the present case, as already stated above, in pursuance of the advertisement Annex.7 dated 28.7.2003, the selection process for the post of Physical Training Instructor (PTI) Gr.III had already commenced in accordance with the directions contained in the Notification dated 31.7.2003 and advertisement Annex.7 dated 28.7.2003 and after that, some amendments in the Notification dated 31.7.2003 in the form of new directions were made by the respondent

no.2 Director through impugned clause (1) of Circular dated 16.8.2003.

19. In my considered opinion, in view of the law laid down by the Hon'ble Supreme Court in the cases referred to above, since the amendments in the Notification dtd.31.7.2003 in the form of new directions as contained in clause (1) of Circular dated 16.8.2003 were made by the respondent no.2 Director after the selection process for the post of Physical Training Instructor (PTI) Gr.III had already commenced and, therefore, the subsequent amendments in the form of directions as contained in clause (1) of Circular dated 16.8.2003 would not affect the process of selection which had already commenced and thus, the action of the respondents preparing a merit list for recruitment to the post of Physical Training Instructor (PTI) Gr.III on the basis of new directions as contained in clause (1) of Circular dated 16.8.2003 cannot be sustained. That apart, the Hon'ble Supreme Court in the case of Sunita Sharma V/s State of Rajasthan reported in JT 2001 (10) SC 170 has held that Sr. Secondary (Vocational) is equivalent to Sr. Secondary (Academic).

Accordingly, this writ petition filed by the petitioner is allowed and the respondents are directed to consider the candidature of the

petitioner for recruitment to the posts of Physical Training Instructor (PTI) Gr.III ignoring the directions as contained in clause (1) of Circular dated 16.8.2003 and taking into consideration the marks obtained by the petitioner in Sr. Secondary (Vocational) and in case the petitioner comes within the zone of selection, he may be given appointment. No order as to costs.

(R.P.VYAS)J.

Rm/